UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS
Region 29

CLASSIC VALET PARKING, INCORPORATED,	)	
Respondent,	)	
	)	
and	)	**Case No. 29-RC-148399**
	)	
UNITED FOOD AND COMMERCIAL	)	
WORKERS, LOCAL 1102,	)	
Charging Party.	)	

CLASSIC VALLET'S REQUEST FOR REVIEW OF
JULY 29, 2015 REPORT ON OBJECTIONS BY REGION 29

COMES NOW the Respondent / Employer, CLASSIC VALET PARKING, INC., by and through its representative, Burdzinski & Partners Incorporated, and pursuant to Section 102.67 and 102.69 of the National Labor Relations Board ("NLRB" or "the Board") Rules and Regulations, hereby requests that the Board review Region 29's report on Classic Valet's objections to conduct affecting the election held in this matter between May 19 and June 2, 2015, among the full-time and regular part-time runners, greeters and cashiers employed by Classic Valet at the Stony Brook University Hospital site in Stony Brook, New York.

I. INTRODUCTION

Pursuant to Section 102.67 of the Board's Rules and Regulations, Classic Valet Parking, Inc. ("Classic Valet") respectfully submits this Request for Review of Regional Director James G. Paulsen's July 29, 2015 *Supplemental Decision and Direction on Objections* ("Decision" or "DDO") in the above-captioned matter[1]. Compelling reasons exist for granting this Request for Review because the Regional Director's Decision raises substantial questions of law or policy due to the Regional Director's departure from officially reported Board precedent; and because the Decision is clearly erroneous on substantial factual issues, as follows: (1) the Regional

[1] The DDO is attached hereto as Exhibit 1.

Director erred in insisting on a mail ballot; and (2) the Regional Director erred in holding that the certain mailed ballots should not be opened and counted in the election process denying certain employees the opportunity to vote. For these reasons, as discussed below, the NLRB should grant the Employer's Request for Review and overrule the Supplemental Decision and Direction of Objections.

II. RELEVANT PROCEDURAL HISTORY

On March 18, 2015, the United Food and Commercial Workers, Local 1102 ("Union" or "Petitioner") filed a petition with the NLRB seeking to represent all full-time and regular part-time runners, greeters and cashiers at Classic Valet's Stony Brook University Hospital site. (Ex. 1, p. 1). On March 25, 2015, a hearing was held to determine the appropriateness of the petition filed by the Union (not an issue raised in this Request for Review). (Ex. 2[2], p. 2). On April 23, 2015, the Regional Director ruled on the issues presented at the hearing and directed an election. (Ex. 2). On May 19, 2015, ballots were mailed out to eligible voters and were tallied on June 4, 2015. (Ex. 1, p. 2).

III. STATEMENT OF FACTS

A. The Parties

Classic Valet is a valet parking service provider operating in the tri-state area servicing clients with locations throughout lower New York, Connecticut and New Jersey. The petition sought the inclusion of Classic Valet's runners, greeters and cashiers at its Stony Brook University hospital location. (Ex. 2, pp. 2-3). The position of "runner" is that of a valet parker. An employee who acts as a runner will take a customer's car and park it, when the customer returns the runner will retrieve the car for the customer. A "greeter" will greet customers upon

[2] The "Decision and Direction of Election" (DDE) is attached hereto as Exhibit 2.

arrival and direct them to where the runners are. The "cashier" will take the payment for the service of parking the customer's car.

B. Mail Ballot Decision

Subsequent to the Regional Director's Direction of Election, the parties discussed the merits of a manual ballot versus a mail ballot election. On April 26, 2015, Classic Valet was very clear in its position that a manual ballot would be better for the eligible voters. (Ex. 3[3], p. 2 and Exhibit A). The Union disagreed, as did the Region. (Ex. 3, p. 2; Ex. 3 – Ex. "B"). On April 27, 2015, Regional Director, without a hearing on the matter, issued his decision to conduct the election via mail ballot. The Regional Director provided four (4) reasons in making his decision, namely:

> (1) The uncertainty surrounding the physical location in which a manual election would take place. In that regard, the Employer does not have a "brick and mortar" facility at Stony Brook University Hospital (the "Hospital"), and it remains unclear whether the Hospital would permit the NLRB to conduct an election inside Hospital facilities, and if so, which facilities would be made available and how accessible such facilities might be for eligible voters;
>
> (2) Eligible employees are "scattered" in the sense that their work schedules vary significantly, so that they are not all present at the Hospital at the same times;
>
> (3) The Petitioner/Union has presented evidence as yet uncontroverted by the Employer that the threatening to reassign and/or has reassigned eligible employees away from their regular work assignments at the Hospital, in favor of assigning these employees to work at other geographic locations allegedly in retaliation for their support for the Union. Conducting a mail ballot election in these circumstances would eliminate the risk that the Employer might reassign employees in order to prevent them from voting in the election; and
>
> (4) Given the relatively small size of the unit at issue here, as well as the distance between the Hospital and the Regional Office, and the likelihood that the election would comprise multiple polling sessions, possibly occurring during evening, night, and/or early morning hours, it would be a more efficient use of Agency resources to conduct the election via mail ballot.

(Ex. 3 – Ex. "B").

[3] Classic Valet's "Position Statement Relating to Election Objections" (less Exhibits "G" through "K" which are not germane to this proceeding) filed with the Region is attached as Exhibit 3.

IV. ARGUMENT

A. Legal Standard

The NLRB may grant review of a Regional Director's decision regarding an election in certain circumstances. Specifically, review may be granted where:

1. A substantial question or law or policy is raised because of: (i) the absence of; or (ii) departure from, officially reported Board precedent.
2. The Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the right of a party.
3. The conduct of a hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
4. There are compelling reasons for reconsideration of an important Board rule or policy.

See NLRB Rules and Regulations, § 102.67(c). Classic Valet's Request for Review is premised on the first two grounds: (1) substantial questions of law are raised because of the absence of and/or departure from, officially reported Board precedent; and (2) the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of Classic Valet.

B. The Regional Director Erred in Insisting on a Mail Ballot

The first part of Classic Valet's first ground for objection was to the Regional Director requiring a mail ballot. (Ex. 1, pp. 2-4.) The Regional Director does have discretion to require mail balloting, but that discretion "is not unfettered". In San Diego Gas & Electric, 325 NLRB 1143, 1144 (1998), the Board held that a manual election is the general rule, not a mail election.

> A Regional Director's discretion, however, is not unfettered and is to be exercised within certain guidelines. Because of the value of having a Board agent present at the election,

> the Board's long-standing policy, to which we adhere, has been that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location.

Because a manual election is the general rule, the Regional Director must consider the following when determining whether to hold a mail ballot:

> When deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress. If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern.

See Id. at 1145.

Here, the Regional Director only considered the cost to the Board for the election and did not consider the interests of the voters. (Ex. 3 – Ex. "B", p. 1). Classic Valet requested a manual election and informed the Board Agent that it's client (Stony Brook Hospital) may not permit a poll to be on the hospital property, but that Classic Valet was searching for an off-site location near the hospital to hold the election. (Ex. 3 – Ex. "A", pp. 1-2). Classic Valet also requested different time blocks for the poll to be open, so that all unit members could vote either before or after their shifts ended. (Ex. 3 – Ex. "A", pp. 1-2). The Board Agent indicated that given the small size of the unit and the number of hours the voting poll would have to be open to cover all three shifts, the Regional Director would not agree to a manual election and that the election would have to completed by mail balloting. (Ex. 3 – Ex. "B", p. 1). The principle reason given was that the size of the unit did not justify the cost of keeping the polls open, the Board did not want to pay to keep the pools open long enough to allow all shifts to vote before and after work.

As a result of the Regional Director's insistence on mail balloting (and discretion in ultimately determining the manner by which the voting would occur), the election took place via mail balloting. (Ex. 3 – Ex. "B").

The Regional Director's sole consideration of the economic interests of the Board did not take into consideration that the voters were not scattered, nor picketing. As evidenced by the fact that all twenty-nine (29) eligible voters attempted to vote but only eighteen (18) out of twenty-nine (29) were able to submit valid ballots that were received timely by the Region even though all twenty-nine (29) mailed ballots were postmarked prior to the cutoff date, mail balloting was not calculated to allow all eligible voters to vote. (Ex. 1, p. 2-4). This election cannot be considered indicative of the will of the unit members as a determinative number were disenfranchised. It was an abuse of discretion to force a mail ballot election here.

C. The Regional Director Erred in Holding that Certain Mailed Ballots Should Not be Opened and Counted in the Election Process Denying Certain Employees the Opportunity to Vote

The second part of Classic Valet's first ground for objection was to the Region failing to open and count ten (10) ballots that were received by the Region "untimely". (Ex. 1, pp. 2-4.) It is the responsibility of the Board to establish the proper procedure for the conduct of its elections so that all eligible voters are given an opportunity to vote. *See* Yerges Van Liners, 162 NLRB 1259, 1260 (1967); Alterman-Big Apple, Inc., 116 NLRB 1078 (1956).

> The Board is responsible for establishing the proper procedure for the conduct of its elections. In carrying out this responsibility, a primary concern of the Board is whether employees are given a sufficient opportunity to vote. While the Board is not required to guarantee that every voter is able to get to the polls, when it is alleged that numerous employees were prevented from voting, the Board must assess whether the particular circumstances so affected a sufficient number of ballots as to destroy the requisite laboratory conditions under which elections must be conducted. If there is a reasonable possibility that this occurred and a determinative number of votes are called into question, to maintain the Board's high standards, the election must be set aside.

Baker Victory Services, Inc., 331 NLRB 1068, 1069-1070 (2000), *quoting* V.I.P. Limousine, Inc., 274 NLRB 641 (1985) (holding that an election ought to be set aside where a massive snow storm prevented a sufficient number of voters to vote).

Four days after the ballots were opened, Classic Valet learned that the Region received nine (9) ballots on June 5, 2015. (Ex. 3 – Ex. "E", p. 1). All nine (9) were postmarked in plenty of time to be returned for the mail ballot opening on June 4, 2015, as well as the June 2, 2015 deadline mandated by the Region[4]. (Ex. 3 – Ex. "E", p. 1). Also on June 8, 2015, the Region advised Classic Valet that the Region received an additional ballot after the USPS delivered it to the Clerk of the District Court on June 5, 2015. (Ex. 3 – Ex. "F", p. 1). Said ballot was postmarked prior to the June 4, 2015 mail ballot opening date, as well as the June 2, 2015 deadline mandated by the Region[5]. (Ex. 3 – Ex. "F", p. 1).

Classic Valet communicated to the Region the fact that the United States Postal Service (USPS) had implemented changes to its delivery schedule, causing mail to be delivered slower in the greater New York area. (Ex. X, p. X). In addition, Classic Valet raised the issue that due to the Memorial Day holiday, the employees lost a day of mail service during the May 19 to June 2, 2015 ballot return period. (Ex. X, p. X). The Region in its DDO did not address these concerns, other than to summarily dismiss the same. (Ex. 3, p. 3). No real analysis was given by the Region as to why a vote went to the wrong federal agency or why nine (9) other ballots, all postmarked in time, did not timely arrive. This is clearly an abuse of discretion.

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[4] The nine (9) referenced ballots were postmarked as follows: (1) Edwin Arias (Voter #3) – postmarked 5/28/15; (2) Phillip Borzumato (Voter #7) – postmarked 5/28/15; (3) Claudio Marrero (Voter #15) – postmarked 6/1/15; (4) Selena Perez (Voter #19) – postmarked 6/1/15; (5) Jose M. Perez (Voter #21) – postmarked 5/29/15; (6) Jeremy Schulze ((Voter #24) – postmarked 5/28/15; (7) Douglas Taylor (Voter #26) – postmarked 5/28/15; (8) Indhira Valdez (Voter #28) – postmarked 5/30/15; and, (9) Henry N. Valdez (Voter #30 - not included on original Excelsior List) – postmarked 5/28/15. *See* Ex. 3 – Ex. "E", p. 1.

[5] The ballot delivered to the U.S. District Court was for Scott Gruenwald (Voter #14) and was postmarked on May 27, 2015. See Ex. 3 – Ex. "F", p. 1.

Here, ten (10) out of the twenty-nine (29) eligible voters, approximately 35% of the eligible voters, did not have their ballots opened even though the ballots were all clearly post-marked in time to be returned to the Region. As a result, these ten (10) eligible voters were denied the opportunity to vote through no fault of their own.

There is no question that these ten (10) ballots are determinative of the election since the vote was ten (10) in favor of the union and six (6) against. (Ex. 1, p. 2). This is not the situation where one or two ballots out of hundreds were not opened after being postmarked in plenty of time in advance of a deadline. The failure here is material. The requisite laboratory conditions under which elections must be conducted were destroyed because over one-third of eligible voters were not given the opportunity to have their votes opened. The election ought to be set aside.

Classic Valet's objection is more than simply whether the employees had an opportunity to mail back a ballot, as the Region found that they did. Rather it goes to the heart of the purpose of an election – having all employees cast their votes and have their votes be counted. It is clear by the post-marked ballots that the employees intended to have their votes counted. By following the protocol mandated by the Region (i.e., having to mail back the ballots, no option to manually vote in person) these ten voters were in essence denied the opportunity to vote because the Region's unwillingness to open the ballots. Something happened to cause ballots to not be received in time by the Region even though all ten (10) were postmarked well in advance of the June 2, 2015 deadline. In this situation, we do not know whether it was the USPS's error or processing and distribution of the mail at the Region itself that caused over one-third of the ballots to be late, but the Region's logic here suggests that it need not concern itself with why the

ballots were late. The Region's lack of empathy and its lack of desire to find out why the ballots were not received timely are disturbing.

The Board could remedy this injustice by ruling that the ten (10) ballots in question should be opened and counted. Should this occur, the need to have another election, or even a hearing on the possibility of another hearing, would be unnecessary. Employees, whose rights the Region is to protect, would thus be ensured that their federally protected right to vote would be upheld. To do otherwise is akin to telling these ten (10) voters, "Even though you did nothing wrong and followed the directions given to you to vote, your votes are meaningless and a Union will become your bargaining representative whether you like it or not."

V. CONCLUSION

This election was fraught with errors and problems that cumulatively led to the disenfranchisement of almost 35% of the eligible voters:

1. The Regional Director improperly insisted upon a mail ballot over the request of Classic Valet for a manual ballot.
2. Over one-third, ten (10) out of twenty-nine (29), eligible voters timely mailed back their ballots but were delivered to the Region after the June 2, 2015 deadline.
3. Ten out of twenty-nine (about 35%) of eligible voters were disenfranchised.

The Board has consistently held that "the primary consideration in the conduct of any election is whether the employees are given adequate notice and sufficient opportunity to vote." Cities Service Oil Co. of Pennsylvania, 87 NLRB 324, 328 (1949). Yet, the overall effect of the election procedure employed here has resulted in inadequate notice to eligible voters and an insufficient opportunity to vote. Several errors have cumulatively resulted in an unfair election in which approximately 35% of eligible voters were disenfranchised.

Classic Valet objected to the conduct of this election in totality and requested that it be set aside because of the cumulative effect all of the errors had on the election. Yet, Region 29 dismissed Classic Valet's objections regarding the mail ballot without considering the overall effect the errors had on the voters in this election. Each of the failures in this case, taken together, caused approximately 35% of eligible voters to be completely disenfranchised. The Region ought to have set the election aside and Classic Valet now requests that the Board do so.

> The Board is responsible for assuring properly conducted elections and its role in the conduct of elections must not be open to question. Where ... the irregularity concerns an essential condition of an election, and such irregularity exposes to question a sufficient number of ballots to affect the outcome of the election, in the interest of maintaining our standards there appears no alternative but to set this election aside and to direct a new election.

New York Telephone Co., 109 NLRB 788, 790-791 (1954). Several irregularities in the conduct of this election resulted in a sufficient number of ballots not being considered. The Region erred in not looking at all of these errors taken together.

WHEREFORE, the Board should order that the ten (10) ballots in question be opened and counted, or, in the alternative, the mail ballot election here should to be set aside and a manual ballot election ought to be ordered.

Respectfully submitted by:

BURDZINSKI & PARTNERS INCORPORATED

By: /s/ Brian Carroll

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Dated: August 12, 2015

CERTIFICATE OF SERVICE

This is to certify that service of the above and foregoing REQUEST FOR REVIEW has been made on Region 29 of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on the following parties, namely:

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Dated this 12th day of August, 2015.

By: /s/ Brian Carroll
Brian S. Carroll
Burdzinski & Partners Incorporated
A Federal Labor Practice

Classic Valet
Exhibit 1

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CLASSIC VALET PARKING, INC.	)	
Employer	)	
and	)	Case No. 29-RC-148399
LOCAL 1102, RETAIL, WHOLESALE & DEPARTMENT STORE UNION, UNITED FOOD AND COMMERCIAL WORKERS	)	
Petitioner	)	

SUPPLEMENTAL DECISION ON OBJECTIONS, ORDER CONSOLIDATING CASES, AND NOTICE OF HEARING

On March 18, 2015,[1] Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers, herein called the Petitioner or Union, filed a petition in this matter seeking to represent certain employees employed by Classic Valet Parking, Inc., herein called the Employer.

Pursuant to a Decision and Direction of Election, issued by the undersigned on April 23, an election by secret mail ballot was conducted on from May 19 until June 2, with the count on June 4, among the employees in the following unit:

> All full-time and regular part-time runners (also known as drivers), greeters and cashiers who are regularly employed by the Employer at its Stony Brook University Hospital site, located at Stony Brook, New York, but excluding all employees employed at other sites, administrative employees, clerical employees, professional employees, confidential employees, casual per diem employees, managerial personnel, guards and supervisors as defined by the Act.

[1] All dates hereinafter are in 2015 unless otherwise indicated.

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	29
Number of void ballots	1
Number of ballots cast for the Petitioner	10
Number of votes cast against participating labor organization	6
Number of valid votes counted	16
Number of challenged ballots	2
Number of valid votes counted plus challenged ballots	18

Challenges are not sufficient in number to affect the results of the election.
A majority of the valid votes cast has been cast for the Petitioner.

The Employer filed timely objections to conduct affecting the results of the election. The Employer's objections are attached hereto as Exhibit "A."

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned Employer's objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

Objection 1

In its first objection, the Employer objects to the Regional Director's decision to conduct this election by mail ballot. Specifically, the Employer alleges that the Region directed a mail ballot election over the Employer's objection. The Employer further alleges that certain eligible voters did not receive ballots. Finally, the Employer alleges that there were ten ballots which were postmarked before the count, but received by the Region after the count. The Employer

asserts that these late ballots should be opened and counted. The Petitioner asserts that this objection lacks merit.

In its offer of proof, the Employer states its attorney, Bernard Burdzinski, will testify that that the Employer objected to conducting the election by mail ballot and proposed alternatives for conducting a manual election. Specifically, prior to the election, the Employer stated that a mail ballot was not necessary because all the employees could be scheduled to work and available to vote from 6:00 a.m. to 8:00 a.m. or from 3:00 p.m. until 5:00 p.m. Additionally, the Employer stated that there were several locations at Stony Brook University Medical Center at which an election could be held. Further, Burdzinski will testify that two named eligible employees reported to the Employer that they had not received ballots and that, in turn, the Employer alerted the Region. Finally, the Employer states that Burdzinski will testify that the Board Agent conducting the election confirmed that the Region received ten ballots after the count, including one ballot which appears to have been delivered initially to U.S. District Court for the Eastern District of New York and forwarded to the Region by the clerk of that court. The Employer states that it will produce Postmaster Christopher Yanke to testify that mail delivery has been slow in 2015.

The Petitioner asserts that the Regional Director properly exercised his discretion in deciding to conduct the election by mail ballot. With regard to the voters who did not receive ballots, the Petitioner states the Region alerted voters that they could request a new ballot if they did not receive one. Further, the Petitioner states that any potential mail slowdown is not grounds for opening and counting ballots that were received by the Region after the count on June 4.

The independent investigation revealed that prior to the election, the parties took opposing positions regarding whether to conduct the election by mail ballot. The Employer

opposed a mail ballot election. The Petitioner requested that the election be conducted by mail ballot for a number of reasons, including that unit employees are scattered temporally and geographically, that the Employer was engaging in unfair labor practices, that a mail ballot election would be more efficient for the Region, and that there was no location available at Stony Brook University Medical Center at which to hold the election. The investigation also revealed that the Region sent duplicate ballots to the two employees identified by the Employer and that those employees returned their ballots. In addition, the Region sent duplicate ballots to other individuals.

Discussion

With regard to the Regional Director's decision to conduct a mail ballot election, the Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See Ceva Logistics U.S., Inc., 357 NLRB No. 60 (2011) (in which the Board held that the Regional Director acted within his discretion when he directed an election on a day on which employees were scheduled to attend a meeting at the Employer's facility, but were not scheduled to work); San Diego Gas & Electric, 325 NLRB 1143 (1998) (in which the Board stated that a Regional Director has broad discretion in determining the arrangements for an election); Manchester Knitted Fashions, 108 NLRB 1366 (1954) (in which the Board stated that the Regional Director has the discretion to determine the time and place for an election). The Board has specifically found that the Regional Director has the discretion to determine whether an election will be conducted manually or by mail ballot. See Nouveau Elevator Industries, 326 NLRB 470, 471 (1998) (in which the Board found that the Regional Director has broad discretion in determining the method by which an election is conducted and that such a decision should not be overturned unless clear abuse of discretion can be demonstrated).

In San Diego Gas and Electric, the Board specifically found that mail ballot elections are particularly appropriate in cases where employees are geographically or temporally scattered, or where there is a strike, lockout, or picketing in progress. In those cases, the Board found that a Regional Director should also consider the positions of the parties, the ability of the unit employees to read and understand a mail ballot, the availability of addresses for employees, and the most efficient use of Board resources. In such cases, the Board stated "we will normally expect the Regional Director to exercise his or her discretion within the guidelines set forth above." San Diego Gas and Electric, 325 NLRB at 1145. Several of these considerations cited by the Board are present in the instant case, including the temporal and geographic scattering of employees, demonstrating that the Regional Director properly exercised his discretion in directing a mail ballot election. The Employer has not presented any evidence that that the Regional Director abused his discretion by directing a mail ballot in this case. See Nouveau Elevator Industries, supra.

With regard to the Employer's allegation that voters did not receive ballots, the independent investigation showed that the voters identified by the employer were provided with duplicate ballots and returned them. Further, duplicate ballots were provided to other employees. There is no evidence that any voter was disenfranchised. Compare Oneida County Community Action Agency, Inc., 317 NLRB 852 (1995) (finding that an election should be set aside if voters were disenfranchised during a mail ballot).

The Employer alleges that the ten ballots received by the Region after the count should be opened and counted. As the Board has found, "[t]here must be some degree of finality to the results of an election, and there are strong policy considerations favoring prompt completion of representation proceedings." Versail Manufacturing, 212 NLRB 592, 593 (1974); see also J. Ray McDermott & Co. v. NLRB, 571 F.2d 850, 855 (1978) (finding that parties have a

substantial interest in the finality of representation proceedings). It would be unduly burdensome to revise a Tally of Ballots in order to include ballots that were received after the count. The Board has held that ballots received after the due date but *before* the count should be opened and counted as long as it does not interfere with the Board's election procedures. In Kerrville Bus Co., 257 NLRB 176 (1981), seven mail ballots were received after the return date for the ballots, but before the count. The Board ruled that all seven ballots should be opened and counted. In so finding, the Board emphasized that the fact that these ballots were received before the count was most significant, thus allowing employees the broadest possible participation "as long as the election procedures are not unduly interfered with or hampered." Kerrville Bus Co., 257 NLRB at 177; see also Watkins Construction Co., 332 NLRB 828, 828 (2000) (in which the Board held that a late ballot should be counted if it is received before the count begins); J. Ray McDermott & Co. v. NLRB, 571 F.2d at 855 (finding the non-receipt of mail ballots does not render a mail ballot election invalid). This case is akin to a case where a voter appears at the polls after the count of ballots. See Versail Manufacturing, 212 NLRB at 593 (in which the Board declined to set aside an election because an over-the-road driver was not able to return from a trip in time to vote in an election).

With regard to the Employer's allegation that delivery of the mail ballots was slow, the Board has found that the failure of the Postal Service to deliver mail ballots does not necessitate setting aside an election. See J. Ray McDermott & Co. v. NLRB, 571 F.2d at 855 ("It cannot be said that an election by mail is per se invalid whenever a potentially decisive number of votes, no matter how small, is lost through the vagaries of mail delivery."). For the reasons stated above, I overrule the Employer's first objection.

Objection 2

In its second objection, the Employer alleges that the Petitioner engaged in objectionable activity during the critical period before the election. Each of the Employer's allegations is discussed below.

Paragraph 12

In paragraph 12, the Employer alleges that several potential bargaining unit members were harassed and intimidated by representatives of the Petitioner. The Petitioner asserts that this objection lacks merit.

In its offer of proof, the Employer generally cited affidavits of employees, but did not allege any specific conduct. The Petitioner denies this allegation.

An objecting party must allege specific objectionable conduct. In Audubon Cabinet Company, 119 NLRB 349 (1957), the employer filed objections alleging, inter alia, that the union had "threatened, intimidated, and coerced" employees. The Board found that such allegations were not sufficiently specific to warrant further investigation: "Objections, to merit investigation by a Regional Director, must be reasonably specific in alleging facts which prima facie would warrant setting aside an election. . . . In our opinion, the mere allegation that the Petitioner threatened, intimidated, and coerced employees constitutes a general conclusion devoid of any specific content or substance, which fails to satisfy the Board's requirement of reasonable specificity in the filing of objections." Audubon Cabinet, 119 NLRB at 350-51. The Employer's allegation that the Petitioner "harassed and intimidated" employees is not sufficiently specific to warrant additional investigation. Absent a specific allegation of objectionable conduct, I overrule the objection in paragraph 12 of the Employer's second objection.

Paragraphs 13, 14, 15, 18, 19, 20, and 22

In paragraph 13, the Employer alleges that during the critical period, Union representatives told employees that their votes would not be confidential. In paragraph 14 of its objections, the Employer alleges that during the critical period, Union representatives told employees that if the Union was not voted in, the Employer would fire the employees because they supported the Union. In paragraph 15, the Employer alleges that during the critical period, Union representatives told employees that the only way they would keep their job is if they voted for the Union. In paragraph 18, the Employer alleges that during the critical period, Union representatives told employees that if the company remained non-union, the Employer would fire the Spanish speaking employees and replace them with English speaking employees. In paragraph 19, the Employer alleges that during the critical period, Union representatives told employees that the Union was aware of who signed authorization cards and that unless those people voted for the Union, they would get fired. In paragraph 20, the Employer alleges that during the critical period, Union representatives told employees that the Union would get them better benefits if the Union was voted in. In paragraph 22, the Employer alleges that during the critical period, Union representatives told employees that they would lose overtime if they voted for the Employer. The Petitioner asserts that these allegations lack merit.

In its offer of proof, in support of paragraph 13, the Employer provided affidavits from employees stating that during the critical period, Union representative Saul Guerrero told these employees that their votes would not be confidential and that the Union would know how they voted.

In support of paragraph 14 and 15, the Employer provided affidavits from certain employees. One employee testified that during the critical period, Union representative Guerrero told him/her that if the Employer won the election, the Employer would fire all the workers and

that if employees voted for the Union, they would keep their jobs, but if they voted for the company, they would lose their jobs. This employee further testified that Guerrero told him/her that the only way to keep his/her job was to vote for the Union. A second employee testified that Guerrero told him/her that he could affect whether s/he kept her job. A third employee testified that Guerrero told him/her that if s/he voted for the company s/he would lose his/her job but if s/he voted for the Union, s/he would keep his/her job and that the only way to keep his/her job was to vote for the Union. This employee also stated that Guerrero told a group of employees that they had better vote for the Union if they wanted to keep their jobs.

In support of paragraph 18, the Employer provided affidavit testimony from an employee who stated that Union representative Guerrero told employees that if the Employer wins the election, the Spanish speaking employees will be fired and replaced with English speaking employees, but that if the Union wins the election, the Employer will not be able to fire the Spanish speaking employees.

In support of paragraph 19, the Employer provided an employee affidavit in which the employee testified that Union representative Guerrero told him/her that he knew that the employee had signed a union authorization card and that unless that employee voted for the Union, s/he would be fired.

In support of paragraph 20, the Employer provided affidavits from employees in which employees testified that Union representative Guerrero told employees that the Union would get employees sick pay, raises, and vacation pay, and better benefits.[2]

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[2] In its offer of proof, the Employer also provided an affidavit from an employee in which the employee testified that during the critical period, Union representative Guerrero told him/her that the Union would not help him/her because s/he did not support the Union. To the extent that this allegation represents a late filed objection, I overrule the objection. See Avis Rent-A-Car, 324 NLRB 445 (1997) (objections to an election must be filed within seven days of the election).

Finally, in support of Paragraph 22, the Employer provided employee affidavit testimony stating that Union representative Guerrero told him/her that if s/he did not vote for the Union, s/he would not get any overtime. According to the affidavit, the employee asked how the Union could affect his/her overtime and Guerrero responded that he could make things happen or not happen. The Petitioner denies these allegations.

Discussion

It is well settled that misrepresentations in campaign propaganda do not constitute grounds for setting aside an election. See Midland National Life Insurance Co., 263 NLRB 127 (1982); see also TEG/LVI Environmental Services, Inc., 326 NLRB 1469 (1998). In such cases, the Board will not consider the accuracy of campaign claims, but will allow employees to evaluate such claims for themselves. Midland National Life Insurance Co., 263 NLRB at 131, 133. The Board will intervene only in cases where voters could not recognize the material as propaganda, such as in the case of forgery. Id.

In paragraph 20, the Employer alleged that the Petitioner told employees it would get them better benefits. The Board has found that this kind of statement constitutes campaign propaganda which employees recognize and may evaluate for themselves. See Thrifty Rent-A-Car, 234 NLRB 535 (1978) (finding that it is not objectionable for a union to promise better benefits during a campaign because employees understand that a union cannot provide better benefits by virtue of winning an election, but rather must bargain for better benefits). I do not find the alleged statement that employees would get better benefits if the Union won the election, even if true, objectionable.

With regard to the allegations in paragraph 13 that the Petitioner told employees that their ballots would not be confidential, the Board has found that misrepresentations of the Board's processes are not objectionable. See A.J. Schmidt Co., 265 NLRB 1646, 1646 fn. 2 (1982). The

statement that employees' votes would not be confidential, as alleged in paragraph 13, constitutes a misrepresentation regarding the Board's election process, which employees may judge for themselves.

With regard to the various allegations that employees would lose their jobs or overtime if they supported the Employer (paragraphs 14, 15, 18, 19 and 22), the Board has specifically found that threats of job loss or loss of benefits which the union has no power to affect are not objectionable. In Kresge-Newark, Inc., 112 NLRB 896 (1955), the employer alleged that a union representative told employees that if the union did not win the election, the employer would lay off all "colored employees" and the only way to keep their jobs was to vote for the union. The Board found that this statement was not objectionable, stating "that such a statement, even if made by a representative of the [union], did not constitute a threat of a reprisal which it was within the power of the [union] to take thus preventing the employees from exercising a free choice in the election. The statement constituted at most an accusation against the Employer in the nature of campaign propaganda which the employees were capable of evaluating in choosing their bargaining representative." Kresge-Newark, 112 NLRB at 871; compare Baja's Place, Inc., 268 NLRB 868, 868-69 (1984) (finding that a union representative's threat that he would get an employee's job was objectionable where the representative "exercised a significant degree of influence over a substantial number of jobs in the industry"). In the present case, there is no evidence that the Union representative has any power to affect employees' jobs or overtime. As stated above, one employee even expressed doubt about whether the Union representative could affect his/her overtime. These alleged statements constitute "an accusation against the Employer in the nature of campaign propaganda" as described by the Board in Kresge-Newark, supra. For this reason, I do not find these alleged threats that employees would lose their jobs or overtime if

they voted for the Employer objectionable. Accordingly, I overrule the allegations in paragraphs 13, 14, 15, 18, 19, 20, and 22 of the Employer's second objection.

Paragraphs 16, 17, 21, and 23

In paragraph 16, the Employer alleges that during the critical period, Union representatives told employees that bad things would happen to them if they voted for the Employer. In paragraph 17, the Employer alleges that during the critical period, Union representatives told employees that the Union would make sure they regretted it if they voted for the Employer. In paragraph 21, the Employer alleges that during the critical period, Union representatives told employees that if they did not vote for the Union, the Union would drag them into court and pull immigration records. In paragraph 23, the Employer alleges that during the critical period, Union representatives told employees that they better not mess with the Union or the Union would make their lives miserable. The Petitioner asserts that these allegations lack merit.

In support of these allegations, the Employer provided employee affidavits. One employee testified that during the critical period, Union representative Guerrero told him/her that he will make sure bad things happen to the employee if that employee did not vote for the Union. Another employee stated that Guerrero told him/her that s/he should do what the Union wants or bad things would happen. A third employee testified that Guerrero told him/her that good things would happen if s/he voted for the Union, but bad things would happen if s/he voted for the company. Two employees testified that Guerrero told them that if they voted for the company, he would make sure the employee regretted it. One employee testified that during the critical period, Guerrero told him/her that he could drag him/her into court and ask about his/her immigration records. Finally, an employee testified that during the critical period, Guerrero told him/her that he could make the employee's life miserable if that employee did not vote for the

Union, that the employee better not try to mess with him, and that if the employee knows what is good for him/her, s/he will vote for the Union. The Petitioner denies these allegations.

The foregoing conduct of alleged threats of dragging employees into court and checking their immigration records and of unspecified reprisals, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[3] In view of the conflicting positions and facts asserted by the parties regarding the Petitioner's alleged threats of dragging employees into court and checking their immigration papers and of unspecified reprisals, I find that paragraphs 16, 17, 21, and 23 of the Employer's objections raise material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that the allegations encompassed by paragraphs 16, 17, 21, and 23 of the Employer's second objection be consolidated with the Complaint and Notice of Hearing in Case No. 29-CA-149061, to be heard before an Administrative Law Judge.

Summary

In summary, I have overruled the Employer's first objection and paragraphs 12, 13, 14, 15, 18, 19, 20, and 22 of the Employer's second objection. I have directed that a hearing be held regarding paragraphs 16, 17, 21, and 23 of the Employer's second objection and have consolidated those allegations with the hearing to be held in Case No. 29-CA-149061, to be heard before an Administrative Law Judge.

RIGHT TO FILE REQUEST FOR REVIEW

Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this

[3] See Labriola Baking Co., 361 NLRB No. 41 (2014) (in which the Board found a threat to report employees to immigration objectionable); Smithfield Foods, Inc., 347 NLRB 1225 (2006) (in which the Board set aside an election after, inter alia, threats of unspecified reprisals).

Supplemental Decision by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing a Request for Review

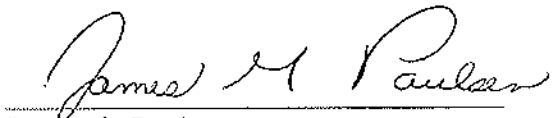
Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on August 12, 2015, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically**. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website **is accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[4] A copy

[4] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must

of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Brooklyn, New York, on July 29, 2015.



James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

EXHIBIT A

UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Region 29

CLASSIC VALET PARKING, INCORPORATED, Respondent,	)	
and	)	Case No. 29-RC-148399
UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1102, Charging Party.	)	

ELECTION OBJECTIONS

COMES NOW the Respondent / Employer, CLASSIC VALET PARKING, INC., by and through its representative, Burdzinski & Partners Incorporated, and pursuant to Section 102.69 of the National Labor Relations Board ("NLRB" or "the Board") Rules and Regulations, hereby submits the following Objections to the Election that was conducted on June 4, 2015, namely:

1. That during the pre-election and pre-stipulation period, the Employer opposed a mail ballot election and preferred to have an in person manual election. On April 26, 2015, the Employer submitted to the Region its rationale as to why it was opposed to a mail ballot election.
2. The Region and the Union disagreed with the Employer and a mail ballot election was ordered.
3. That in an April 28, 2015 letter, the Region set forth the details of the mail ballot election.
4. That on May 27, 2015, several employees contacted the Region and informed the Region that they had not received their ballots. The employees then contacted the Employer's representative of the same.

5. That on May 29, 2015, several employees again contacted the Region and informed the Region that they had not received their ballots. The employees then contacted the Employer's representative of the same. The Employer's representative notified the Region that two (2) employees had shared with the Employer that they had not yet received their mail ballots.

6. That the mail ballots were counted by the Region on June 4, 2015. At that time, the Employer realized that a lot of ballots were not returned (compared to the number of employees on the Excelsior List). As a result of these concerns, the Employer emailed the Region on June 5, 2015, inquiring if additional ballots were received after the counting.

7. On June 5, 2015, the Region received the following yellow ballot envelopes used to return ballots in the mail:

Edwin Arias (Voter #3) – postmarked 5/28/15
Phillip Borzumato (Voter #7) – postmarked 5/28/15
Claudio Marrero (Voter #15) – postmarked 6/1/15
Selena Perez (Voter #19) – postmarked 6/1/15
Jose M. Perez (Voter #21) – postmarked 5/29/15
Jeremy Schulze (Voter #24) – postmarked 5/28/15
Douglas Taylor (Voter #26) – postmarked 5/28/15
Indhira Valdez (Voter #28) – postmarked 5/30/15
Henry N. Valdez (Voter #30) – postmarked 5/28/15

8. On June 8, 2015, the Region today received an additional yellow ballot envelope from a Scott Gruenwald (Voter #14). The yellow envelope was placed inside a white envelope from sender "Clerk of U.S. District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201." Inside the white envelope were two separate envelopes – one opened yellow envelope bearing what appears to be the signature of Voter #14 (Scott Gruenwald); and an unopened blue envelope marked "OFFICIAL SECRET BALLOT – UNITED STATES GOVERNMENT – TO BE OPENED *ONLY*

BY THE NATIONALLABOR RELATOONS BOARD." The yellow envelope was postmarked May 27, 2015. The white one that came from the US District Court was postmarked June 5, 2015.

9. The ten (10) yellow ballot envelopes that the Region received were all postmarked well in advance of the June 4, 2015 election. The Employer believes that the employees mailed the same timely and in good faith that their ballots would be counted.

10. The Employer is aware that the United States Postal Service has made changes to its delivery service requirements per 39 CFR 121. These changes have caused mailed to be delivered slower than in the past. This slow down was confirmed by the Postmaster Christopher Yanke, serving the Stony Brook University Medical Center location.

11. The Employer believes that the slow down in the USPS delivery service caused the nine (9) ballots to be received by the Region one (1) day after the deadline to be counted in the election. All nine (9) ballots were properly and timely mailed. A tenth (10^{th}) ballot was also properly and timely mailed, however, it was delivered by the USPS to the wrong location. It is the Employer's opinion that all ten (10) ballots that were received by the Region on Friday, June 5, 2015, or Monday, June 8, 2015, should be opened and counted.

In the event the Region opens and counts the ten (10) ballots in question and the Union receives a majority of the votes cast, or in the event that the Region does not open and count the ten (10) ballots in question, the Employer believes the Union engaged in conduct detrimental to the election. Specifically:

12. That during the pre-election time frame, several potential bargaining unit members were harassed and intimidated by representatives of the Union.

13. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that their votes would not be confidential.

14. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that if the Union was not voted in, the Employer would fire the employees because they supported the Union.

15. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that the only way they would keep their jobs is if they voted for the Union.

16. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that "bad things" would happen to them if they voted for the Employer.

17. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that the Union would make sure they "regretted it" if they voted for the Employer.

18. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that if the company remained non-union, the Employer would fire the Spanish speaking employees and replace them with English speaking employees.

19. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that the Union was aware of who signed authorization cards and unless those people voted for the Union, they would get fired.

20. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that the Union would get them better benefits if

the Union was voted in, not simply negotiate for better benefits, but promised better benefits.

21. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that if they did not vote for the Union, the Union would drag them into court and pull immigration records.

22. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that they would lose their overtime if they voted for the Employer.

23. That during the pre-election time frame, representatives of the Union told several potential bargaining unit members they better not mess with the Union or the Union would make their lives miserable.

WHEREFORE, the Employer requests that the above-referenced ten (10) unopened but postmarked ballots be opened and counted. In the event that the ballots are not opened, or are opened and the Union has a majority of the votes, the Employer objects to the conduct of the election by the Union and believes that said conduct directly affected the employees' ability to freely cast their votes.

Respectfully submitted by:

BURDZINSKI & PARTNERS INCORPORATED

By: /s/ Brian Carroll

Brian S. Carroll
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Dayton, Ohio 45458
(620) 388-2441 – telephone
(866) 433-4070 – facsimile
bcarroll@burdzinski.com - email
Representatives for Classic Valet Parking, Inc.

Dated: June 11, 2015

CERTIFICATE OF SERVICE

This is to certify that service of the above and foregoing ELECTION OBJECTIONS has been made on Region 29 of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on the following parties, namely:

Mr. Matthew A. Jackson
Field Attorney, Region 29
Two Metro Tech Center
Suite 5100, Floor 5
Brooklyn, New York 11201-3838
matthew.jackson@nlrb.gov

Dated this 11th day of June, 2015.

By: /s/ Brian Carroll
Brian S. Carroll
Burdzinski & Partners Incorporated
A Federal Labor Practice

Classic Valet
Exhibit 2

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CLASSIC VALET PARKING, INC.
Employer

and Case 29-RC-148399

LOCAL 1102, RETAIL, WHOLESALE &
DEPARTMENT STORE UNION,
UNITED FOOD AND COMMERCIAL WORKERS
Petitioner[1]

DECISION AND DIRECTION OF ELECTION

Classic Valet Parking, Inc. ("Classic Valet" or "the Employer") provides parking and transportation services at various locations in New York, New Jersey and Connecticut ("the tri-state area"), including at Stony Brook University Hospital ("the Stony Brook site") in Stony Brook, New York. On March 18, 2015, Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers ("the Petitioner") filed a petition under Section 9(c) of the National Labor Relations Act ("the Act"), seeking to represent a unit of approximately 22 - 25 drivers (a.k.a. "runners"), cashiers and greeters who regularly work at the Stony Brook site.[2]

Although the Employer never expressly contended that the petitioned-for unit would be *inappropriate*, it initially contended that "an" appropriate unit would include all

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1 The Petitioner's name appears as amended at the hearing.

2 The petitioned-for unit appears as amended. Although the Petitioner initially sought only the drivers at Stony Brook, it later amended its petition to include greeters and cashiers at Stony Brook as well (Transcript pp. 147-8), and to exclude drivers/runners, greeters and cashiers employed at other locations (Transcript pp. 154-5).

380 of its employees in the tri-state area or, alternatively, a unit of approximately 80 – 100 employees in the Brooklyn, Queens and Long Island region. In its post-hearing brief, the Employer proposed yet another alternative unit, consisting of an unspecified number of employees who work in Long Island. The Petitioner disagrees, contending that its petitioned-for unit limited to the Stony Brook site is appropriate. Thus, the parties dispute the geographical scope of an appropriate unit.[3]

A hearing on this issue was held before Matthew Jackson, a Hearing Officer of the National Labor Relations Board ("the Board"). The Employer called its president and owner, Julian Marte, to testify, and the Petitioner called five drivers to testify. Pursuant to Section 3(b) of the Act, the Board has delegated authority in this proceeding to the undersigned Regional Director.

For the reasons discussed below, I conclude that the single-site unit sought by the Petitioner is appropriate for purposes of collective bargaining. Accordingly, I will direct an election among the petitioned-for employees regularly employed at the Stony Brook site.

FACTS

Background – general description of the operations at Stony Brook

The record indicates that, in December 2013, the Employer entered a contract to provide valet parking services at Stony Brook University Hospital, affiliated with Stony Brook University, State University of New York (SUNY). When cars arrive at certain

[3] In its post-hearing brief, the Employer seems to have misunderstood the Petitioner's amendment of its proposed unit. (See footnote 2 above.) Both the Petitioner and the Employer agree that an appropriate unit would include the classifications of drivers/runners, greeters and cashiers. Thus, there is no dispute over the composition of the unit, only its geographic scope.

entrances to drop off patients or visitors, the Employer's employees greet the passengers, give them a numbered ticket, and park their cars in one of four nearby lots. Valet parking services are available at the main hospital entrance (until 9:00 p.m., 7 days/week), at the emergency entrance (24 hours/day, 7 days/week) and at the radiation oncology and cancer center entrances (Monday through Friday only, until 6:00 and 6:30 p.m., respectively). Visitors pay $10 for valet parking services at the main entrance, but they do not have to pay for such services at the emergency entrance if they get their ticket "stamped."

Most of Classic Valet's employees are "runners" or drivers who bring the customers' cars from the entrances to the parking lots and, then, from the lots back to the entrances when the patients are ready to leave. Classic Valet employs relatively few greeters and cashiers. The employees who testified at the hearing all began working at the Employer's Stony Brook site approximately 15 months before the hearing in March 2015, i.e., around the time that the Classic Valet began providing the services at Stony Brook in December 2013.

General testimony regarding the Employer's other locations

The president and owner of Classic Valet, Julian Marte, testified that it employs about 400 people in the tri-state area, about 380 of whom are non-supervisory. Marte estimated that employees work at approximately 200 different sites in the tri-state area, including medical offices, luxury car dealerships, country clubs and catering halls when there are weddings and other special events.

The Employer's office is located in New Rochelle, Westchester County, New York.

Marte further testified that sites with 10 or more employees generally have an on-site supervisor. On-site supervisors report to the Employer's regional managers. The Employer employs about 10 regional managers, including two for the Brooklyn/Queens/Long Island[4] region: Elias Cabanas and Marco Mendoza.[5] (Marte testified that there are approximately 80 to 100 employees in the Employer's Brooklyn, Queens and Long Island region.) The regional managers report to general manager Ervin Melendez who, in turn, reports to Marte. Both Melendez and Marte are based in the New Rochelle office.

Evidence regarding the community of interest among the Employer's sites

There seems to be no dispute that employees perform similar duties at all of the Employer's sites, and that they wear the same uniform.

As stated above, the Petitioner in this case seeks to represent a unit of employees who work at the Stony Brook University Hospital site on a regular basis. The Petitioner initially petitioned for a group of approximately 20 runners/drivers. The Petitioner later amended its proposed unit to include the greeters and cashiers as well. Thus, it appears that the petitioned-for unit, as amended, consists of approximately 22 -25 employees who regularly work at the Stony Brook site.

The Employer's witness, president and owner Julian Marte, initially contended that there are about 40 employees who work at Stony Brook at various times; that only

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4 Since Long Island consists of Nassau and Suffolk Counties, witnesses sometimes referred to this region as "Brooklyn, Queens, Nassau and Suffolk." Stony Brook is located in Suffolk County.

5 Contrary to an assertion in the Employer's post-hearing brief, there is no "single supervisor for all sights [sic] in Long Island, Brooklyn and Queens." Nor is there any evidence that "all employee supervisors are stationed in the New Rochelle office." (Employer's Brief, p. 3.)

half of them (20) work there regularly; that the other half (20) also spend time working at various other locations; and therefore that there is a great deal of "interchange" among the sites. However, the record evidence does not support Marte's contentions in this regard. First of all, it is not clear that Marte was qualified to testify about employees' work assignments, since he stated that he does not make the employees' schedules and that he has no personal knowledge of them. Furthermore, although the Employer introduced some payroll records, those records do not seem to support Marte's contentions. Specifically, the Employer introduced one week's worth of payroll records (Employer Exhibit 2)[6], showing all the employees who worked at the Stony Brook site during the week ending 3/18/2015, i.e., the week immediately before the hearing. During that week, only 28 employees worked at the Stony Brook site for any portion of the week. For 22 of those 28 employees (79%), Stony Brook was the *only* Classic Valet site where they worked. Only 6 of the 28 (21%) worked at Stony Brook and other locations, as follows:

Jose A. Perez	Stony Brook (30 hrs.) Lexus of Rockville Center (17 hrs.) Village of Lake Success (27 hrs.)
Ervin Melendez (general manager)	Stony Brook (24 hrs.) Condo. Medical Arts bldg. in Bay Shore (21 hrs.) the Village of Lake Success (10 hrs.)
Joshua Marte (owner's son)	Stony Brook (15 hrs.) "Condo" in Bay Shore (6.8 hrs.) Village of Lake Success (12.5 hrs.)

6 All references to the record in this case are hereinafter abbreviated as follows: "Tr. #" refers to transcript page numbers. "Er. Ex. #" and "Pet. Ex. #" refer to Employer exhibits and Petitioner exhibits, respectively.

It should be noted that the Employer's post-hearing brief purported to send additional payroll records as an attachment (Brief p.3), but no such records were attached. In any event, the Region would have disregarded evidence improperly submitted after the close of the hearing.

Mario Barajas	Stony Brook (18 hrs.) Land Rover of Huntington (22 hrs.)
Osmar Gonzalez	Stony Brook (30 hrs.) "Condo" in Bay Shore (16 hrs.) Lexus in Massapequa (16 hrs.)
Elias Cabanas (regional manager)	Stony Brook (40 hrs.) Land Rover in Huntington (20 hrs.) Village of Lake Success (30.5 hrs.).

Furthermore, assuming that at least 3 of those 6 would be excluded from any bargaining unit (as supervisors[7] and the owner's son), the percentage of unit employees who worked exclusively at Stony Brook would actually be 88% (i.e., 22 out of only 25).

The testimony of the Petitioner's witnesses also contradicts the Employer's contentions. Specifically, all five of Petitioner's witnesses testified that, since they began working at the Stony Brook site approximately 15 months ago, Stony Brook was the *only* Classic Valet site where they worked. Furthermore, they testified that they usually work with the same co-workers. For example, both Edwin Arias and Ramon Perez both work at the hospital's main entrance, Monday through Friday 3:00 p.m. to 11:00 p.m. (In addition, Arias usually works on Sundays, and Perez usually works on Saturdays.) Both drivers testified that they work with the same people on weekdays every week, including Jose A. Perez and Indhira Valdez. They both further testified that, to their knowledge, their co-workers do *not* work at other Classic Valet sites. In fact, Arias testified that he also happens to live with Jose A. Perez, and knows that Jose A. Perez does not work elsewhere. Nevertheless, on cross-examination, Arias conceded that Jose A. Perez had

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7 The parties stipulated at the hearing that both Elias Cabanas and Ervin Melendez are supervisors as defined in Section 2(11) of the Act, in that they have independent authority to "direct" employees (Tr. 156).

not worked at Stony Brook on the Thursday and Friday before the hearing -- the days when, the Employer contends, Jose A. Perez worked in Lake Success. (Arias said he thought that Jose A. Perez had stayed home sick those two days.) Since Jose A. Perez did not testify, and the Employer introduced only one week of payroll records into evidence, it is somewhat difficult to reconcile this specific discrepancy, and to confirm the extent of interchange among sites generally.

The Petitioner's witnesses differed somewhat regarding working with Joshua Marte, the owner's 23-year-old son. One witness said he never worked with Joshua Marte, and did not know him. Three other witnesses said that they had worked with him a few times, at least until he (Joshua) returned to his university studies. None of the Petitioner's witnesses said they worked with general manager Ervin Melendez, and three witnesses said they do not even know who he is.

There is no dispute that Classic Valet employees who work at Stony Brook must wear a Stony Brook identification badge, in addition to their Classic Valet uniforms. Employees testified that the badge allows them access to certain areas within the hospital grounds. Each laminated badge has the employee's name, photograph and identification number, in addition to the words "Valet Parking Vendor" and "Stony Brook University Affiliate." (*See* Pet. Ex. 1.) Employees received their Stony Brook badge about one week after they commenced employment at the Stony Brook site. The record does not indicate whether the 40 employees who allegedly work at Stony Brook at various times, all have Stony Brook badges.

Julian Marte also testified that employees are hired "from" the Employer's office in New Rochelle, in the sense that the paperwork is sent there. All five employee-

witnesses testified that they were interviewed and hired by Elias Cabanas in Long Island. They did not have to go to New Rochelle. For example, Jonathan Cardona stated that he filled out an application at the Stony Brook site, and gave it to Cabanas there. Cabanas told Cardona that he would be working at the emergency exit, Mondays through Saturdays. Similarly, witness Edwin Arias both testified that Cabanas hired him locally,[8] and that he had never been to the New Rochelle office.

The only employee-witness who said he had been to the New Rochelle office was Emmanuel Dilone. When Dilone had a vehicular accident, he had to make a report there. Julian Marte similarly testified that drivers must report accidents at the New Rochelle office.

During the hearing, there was some confusion regarding the identity of "site supervisors" versus regional managers. As noted above, Marte testified generally that sites with 10 or more employees have an on-site supervisor, who reports to the Employer's regional managers. Marte further testified that employees' schedules and geographical assignments are controlled by the regional managers; that the regional managers communicate the schedule to employees via the site supervisors; that the site supervisors report the employees' hours worked each week to the regional managers for payroll purposes, and that the payroll is generated out of the Employer's New Rochelle

8 As noted above, Arias lives with Jose A. Perez in Port Jefferson, Suffolk County. Arias previously worked for Classic Valet at country clubs when there were weddings and other parties, from 2007 to about 2011. Elias Cabanas, who was Arias' supervisor at that time, apparently knew that Arias was Perez's housemate in late 2013, when Classic Valet got the Stony Brook contract. Arias testified that Cabanas came to their house to ask Arias if he wanted to re-apply to work as a valet driver for the Employer, at the Stony Brook site.

office. Marte also stated specifically that the Employer is "supposed to" have on-site supervision under its contract with Stony Brook University Hospital.[9]

When Marte initially testified at the beginning of the hearing, no site supervisor was specifically identified by name, although the regional managers were identified as Elias Cabanas and Marco Mendoza. Subsequently, when the Petitioner's witnesses testified, they repeatedly named Elias Cabanas as the person who hired them to work at Stony Brook, who trained them, who sets their schedules, who may change their assignment if necessary,[10] who generally monitors and oversees their work, who corrects employees if they do something wrong, who gives them timesheets to sign each week, and who gives them their paychecks. Employees also testified that they must contact Cabanas to call in sick. Ramon Peralta explained that there is a telephone in the parking booth at the emergency entrance, and that Cabanas can be reached by phone if any problems arise during the shift. Peralta also testified that Cabanas had disciplined him once, when Peralta "did something" (unspecified) that Cabanas did not like. Thus, the testimony from employee-witnesses seemed to suggest that Cabanas spends a great deal of time at Stony Brook, essentially as a site supervisor there. Furthermore, there is no evidence that Cabanas works at the Employer's office in New Rochelle, or that he needs approval from upper management there, such as the general manager or president, for

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9 The contract's "pricing page" (attached to Er. Ex. 1) specifically contemplates an "AM Site Supervisor" and a "PM Site Supervisor" at the hospital's main entrance, Monday through Friday, and then dual-purpose supervisor-cashiers at the main entrance on Saturdays and Sundays.

10 For example, Ramon Peralta testified that Cabanas initially assigned him to work at the main entrance, from 7:00 a.m. to 3:00 p.m., six days/week, which Peralta did for five months. Then Cabanas assigned Peralta to work at the emergency entrance instead. Then Cabanas also changed Peralta's hours. For the past two months, Peralta has worked at the emergency entrance from 10:00 a.m. to 7:00 p.m.

making personnel decisions. There was also no specific evidence that Cabanas manages any sites in Brooklyn or Queens.

Consequently, Marte was re-called to the stand, in part to clarify the Employer's supervisory hierarchy. Marte declined to estimate how much time Cabanas spends at the Stony Brook site, as opposed to other sites in Brooklyn, Queens and Long Island. Marte explained generally that Cabanas spends more time at Stony Brook because of Cabanas' "commute time," but also insisted that Cabanas has responsibilities at other sites too. The Employer bills the clients for Cabanas' time at their respective sites. The payroll records for the week ending March 18, 2015 (Er. Ex. 2) purport to show that Cabanas worked 90.5 hours that week, including 40 hours at Stony Brook, 30.5 hours at Lake Success, and 20 in Huntington. On cross-examination, the Petitioner implicitly challenged the accuracy of these records, for example, by asking how Cabanas could work until 5:00 p.m. in Stony Brook and then start working in Lake Success the same evening at 5:00 p.m.[11] In any event, when Marte was asked who the site supervisor was at Stony Brook, he answered that it "could be" Cabanas "when he is there," or Mario Barajas, or Jose A. Perez (who was previously identified as a driver).

The payroll records admitted into evidence indicate that employees' hourly wages range between $7.50/hour and $9.00/hour at Stony Brook. Marte testified that employees who work in assignments where they are likely to get tips earn $7.50/hour, whereas those who generally do not make tips (e.g., at the cancer center entrance) earn $8.75/hour (i.e., the minimum wage in New York State) or more. Marte further testified that the hourly

11 According to Google maps, Lake Success is more than 30 miles from Stony Brook.

rates are "pretty similar" at other sites. Marte did not specifically describe other terms of employment such as benefits, but when asked if the terms and conditions of employment were the "same" regardless of the site, Marte answered affirmatively.

Finally, although Marte characterized the Employer's sites in "the area" as being "geographically close" to each other, the record does not contain any specific information in that regard. As noted above, Lake Success (in Nassau County) is more than 30 miles west of Stony Brook (in Suffolk County). Contrary to an assertion in the Employer's post-hearing brief, there is no evidence that the Long Island sites are "within a few miles of each other." The Employer did not mention any specific sites in Brooklyn or Queens. According to Google maps, the driving distance between Stony Brook and the Employer's office in New Rochelle (Westchester County) is more than 50 miles.

DISCUSSION

As stated above, the only issue to be decided is the geographical scope of the proposed bargaining unit. The Petitioner has petitioned for a unit of 22-25 employees who work regularly at the Stony Brook University Hospital site. At the hearing, the Employer claimed that an appropriate unit would include all 380 of its employees in the tri-state area or, alternatively, a unit of approximately 80 – 100 employees in the Brooklyn, Queens and Long Island region. In its post-hearing brief, the Employer also contended that an appropriate unit might consist of an unspecified number of employees who work in Long Island. I conclude in this case that the petitioned-for unit limited to the Stony Brook site is appropriate for the purposes of collective bargaining.

Initially, it bears repeating that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988), Dezcon, Inc.; 295 NLRB 109 (1989). Whenever a labor organization seeks to represent employees at a single location of a multi-location employer, the Board generally presumes the single-location unit to be appropriate, even though a broader unit might also be appropriate. A multi-location employer who asserts that the single-location unit is *inappropriate* must rebut the presumption, for example, by showing that the single plant is so integrated with the other plants as to lose its separate identity. Cargill, Inc., 336 NLRB 1114 (2001); Kendall Co., 184 NLRB 847 (1970). The burden is on the employer to prove by affirmative evidence a lack of autonomy at the local level. J & L Plate, Inc., 310 NLRB 429 (1993). *See also* Specialty Healthcare and Rehabilitation Center of Mobile, 357 NLRB No. 83, slip op. at p. 13 (2011)(when a petitioned-for group is readily identifiable based on work locations or other factors, a party who contends that only a larger unit is appropriate must show an "overwhelming" community of interest among employees in the larger unit). The relevant factors include the extent of interchange and contact among employees at the different facilities; their functional integration; the extent of centralization in management and supervision, especially with regard to labor relations (hiring, firing, affecting the terms of employment); geographical distance between the facilities; and the history of collective bargaining.

In the instant case, the Employer has not met its burden of showing that the petitioned-for unit, limited to the Stony Brook site, inappropriately excludes employees

who work at the Employer's other sites. First of all, the record evidence does not support the Employer's contention that there is a group of "40 employees" who work at Stony Brook and other sites, and that only "half" of those employees work exclusively at Stony Brook. The Employer's own documentary evidence (Er. Ex. 2) shows that only 3 unit employees worked at Stony Brook and other locations in the week before the hearing. The vast majority (22 out of 25) worked exclusively at Stony Brook that week. Furthermore, the Petitioner's witnesses all testified that they have worked exclusively at Stony Brook since they began working there about 15 months ago; that they do not work at the Employer's other sites; and that they consistently work with the same co-workers during their shifts. Although some witnesses acknowledged occasionally working with other people, such as the owner's son Joshua Marte, the record clearly does not support the Employer's claim of substantial "interchange" among various sites. Nor does the Employer's evidence explain how a group of "40" employees from various sites could work at Stony Brook on occasion, without all 40 having the official identification badge required by Stony Brook to work on the hospital premises.

Furthermore, the record clearly shows a high level of local autonomy at the Stony Brook site, rather than centralized control at the "regional" level or at the Employer's office in New Rochelle. Specifically, although Marte initially claimed that the Employer's hiring and scheduling of employees is done at the New Rochelle office, the probative evidence shows that Elias Cabanas interviewed and hired employees locally for the Stony Brook site when the Employer began its contract with the hospital there. Cabanas also has authority to change employees' assignments and schedules at Stony Brook, and to approve their timesheets for payroll purposes. Furthermore, although

Cabanas may have the title of "regional manager," he seems to spend significant time at Stony Brook, effectively serving as an on-site supervisor there. Thus, the separate supervision at the Stony Brook site, which the Board has found to be "of particular importance," Catholic Healthcare, d/b/a Mercy Sacramento, 344 NLRB 790 (2005), supports the appropriateness of the single-site unit. The record contains no evidence that Cabanas' responsibilities at other sites (Brooklyn, Queens and elsewhere) have actually consolidated or integrated management at a regional level, such that the Stony Brook site has lost its separate identity. In addition, there is no evidence that centralized management from the Employer's office in New Rochelle requires a unit encompassing all of its employees in the tri-state area. Marte repeatedly admitted that he has no firsthand knowledge of the employees' schedules because the "regional managers" determine those schedules.

Finally, the Employer has not submitted evidence to support its contention that its sites in the Brooklyn/Queens/Long Island "region," or even those in Long Island, are geographically close to each other. The Employer's comments regarding "bargaining history" in a larger unit are incorrect.[12]

In the instant case, the Employer has submitted some evidence to support that a multi-site unit might also be appropriate. For example, employees at the multiple sites are employed by the same employer, engaged in providing similar parking and

[12] At the hearing and in its post-hearing brief, the Employer claimed that this Agency had "decided" in a Region 2 case that an Employer-wide unit was appropriate. However, the Agency did not make any such determination. I hereby take administrative notice of Case 02-RC-121593, in which another union filed a petition for Classic Valet's employees at all locations. The petition was thereafter withdrawn by that union, with no "decision" or finding having been made about the appropriateness of the unit. Thus, there is no evidence of "bargaining history" regarding Classic Valet's employees at any location.

transportation services, using the same types of skills. They all wear the same Classic Valet uniform. And there is some evidence that employees' wages are "similar" from site to site. Nevertheless, I find that this evidence does not show integration "so substantial" as to negate the separate identity of the petitioned-for unit of employees at the Stony Brook site. On the contrary, the record clearly shows that an appropriate unit of 22-25 employees has regularly worked together at the Stony Brook site, under local supervision, and has retained its separate identity. Or, as started in the parlance of Specialty Healthcare, *supra*, the Employer has not shown that this "readily identifiable" group at Stony Brook shares an "overwhelming" community of interest with employees in any of the Employer's proposed larger units.

In sum, based on all the foregoing, I find that the Employer's evidence falls short of rebutting the presumptive appropriateness of the petitioned-for unit of employees at the Stony Brook site. Accordingly, I find that the petitioned-for unit is an appropriate unit for collective bargaining, and I will direct an election in that unit below.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that Classic Valet Parking, Inc., is a domestic corporation, with its principal office located at 92 North Avenue, New Rochelle, New York. It is engaged in providing parking and transportation services at various locations

in New York, New Jersey and Connecticut, including at the Stony Brook University Hospital in Stony Brook, New York. During the past year, which period represents its annual operations generally, the Employer provided services valued in excess of $50,000 to Stony Brook University Hospital, an entity directly engaged in interstate commerce.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I hereby find, that Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers, is a labor organization as defined in Section 2(5) of the Act. It claims to represent certain employees of the Employer.

4. A question concerning commerce exists concerning the representation of those employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. As discussed above, I find that the following employees constitute an appropriate unit for purposes of collective bargaining:

All full-time and regular part-time runners (also known as drivers), greeters and cashiers who are regularly employed by the Employer at its Stony Brook University Hospital site, located in Stony Brook, New York, but excluding all employees employed at other sites, administrative employees, clerical employees, professional employees, confidential employees, casual or per diem employees, managerial personnel, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **April 30, 2015.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlrb.gov,[13] by mail, or by

[13] To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

facsimile transmission at (718) 330-7579. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to12:01 of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C.

20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **May 7, 2015.** The request may be filed electronically through the Agency's website, www.nlrb.gov,[14] but may **not** be filed by facsimile.

Dated: April 23, 2015.

/s/

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

[14] To file the request for review electronically, go to www.nlrb.gov, select **File Case Documents**, click on the NLRB Case Number, and follow the detailed instructions.

Classic Valet
Exhibit 3

UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS
Region 29

CLASSIC VALET PARKING, INCORPORATED,	)	
Respondent,	)	
	)	
and	)	**Case No. 29-RC-148399**
	)	
UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1102,	)	
Charging Party.	)	

POSITION STATEMENT RELATING TO ELECTION OBJECTIONS

COMES NOW the Respondent / Employer, CLASSIC VALET PARKING, INC., by and through its representative, Burdzinski & Partners Incorporated, and pursuant to the Region's directives from June 12, 2015, hereby submits the following Position Statement Relating Objections to the Election, namely:

1. That on June 11, 2015, the Employer filed Objections to the Election that was conducted on June 4, 2015.

2. That said election was conducted by mail ballot.

I. OBJECTION 1 – Mail Ballot

The Employer's first Objection centered around the mail ballot election. As stated in the Objections, the Employer opposed the mail ballot procedure but was overruled by the Region. If this matter were to proceed to trial, Bernard Burdzinski (of Burdzinski & Partners, Inc.) would testify that the Employer opposed the mail ballot procedure and offered alternatives to the mail ballot procedure. In addition, Burdzinski would testify that he was advised by Matt Jackson from the Region about the ten (10) ballots that were postmarked in time, but arrived at the Region a day after the election.

Burdzinski would testify about the reasons it opposed a mail ballot (see Exhibit "A") and would also provide testimony as to the fact that the Region did not consider the Memorial Day holiday in calculating the number of days employees had to return the ballots. He would testify that the concerns raised in the Region's April 27, 2015 communiqué (see Exhibit "B") were not well founded as the "transfer concerns" that the Region mentioned were not part of the charges that the Region found merit in (see 29-CA-149061). Furthermore, Burdzinski would testify that due to the fact that ballots were not released to the employees until 5:00 p.m. on May 19, 2015 (meaning that the ballots were not actually mailed until May 20, 2015) caused the employees to lose a day that they may have had to return ballots.

With respect to the ballots themselves, Burdzinski would testify to the problems that the employees had with receiving their mail ballots (see Exhibit "C"). Furthermore, employee Selena Perez would testify about her problems in receiving a ballot (see Exhibit "I"). Then, after the ballots were counted on June 4, 2015, Burdzinski noticed that the count was low compared to the number of ballots sent out by the Region. As a result, on June 5, 2015, Burdzinski inquired as to whether or not more ballots were received by the Region after the count was concluded (see Exhibit "D"). On June 8, 2015, Burdzinski was advised by Jackson that nine (9) ballots were received by the Region on June 5, 2015. All nine (9) were postmarked in plenty of time to be returned for the mail ballot opening on June 4, 2015 (see Exhibit "E"), as well as the June 2, 2015 deadline mandated by the Region. Also on June 8, 2015, Jackson advised Burdzinski that an additional ballot was received by the Region after it was delivered by the USPS to the Clerk of the District Court on June 5, 2015. Said ballot was postmarked prior to the June 4, 2015 mail ballot opening date (see Exhibit "F"), as well as the June 2, 2015 deadline mandated by the

Region. The Employer is requesting that the ten (10) ballots be admitted as evidence at any future proceeding.

Upon learning of the ten (10) ballots being postmarked in time, but being received by the Region after the ballot opening, Burdzinski spoke with Postmaster Christopher Yanke who advised that the USPS had implemented guidelines in 2015 that slowed down the delivery of mail. This slow down could be as much as one (1) to two (2) days, even when the mail is being received and delivered in the same postal area. The Employer does not believe the Region accounted for this slow down (or the Memorial Day holiday or the fact that the ballots were not actually mailed until June 20, 2015) during the calculation of the timeframes for the mail ballots to be received by the Region on June 2, 2015. The Employer is willing to subpoena Yanke to testify about his conversation with Burdzinski, as well as any and all of the ten (10) employees who's ballots were properly postmarked but not received by the Region by June 2, 2015.

The ten (10) ballots in question are determinative to the outcome of the election. To deny these ten (10) voters their right to be heard is akin to disenfranchising them and telling them that their views are not important to the fair election process.

II. OBJECTION 2 – COERCIVE ACTIVITY BY THE UNION

With respect to the Employer's second objection, the Employer believes that there were several coercive actions made by a representative of the Union. The Employer believes that each action to each employee by itself would constitute a separate and distinct objection (as outlined in the actual objections to the election filed by the Employer). However, for purposes of this position statement, the Employer is categorizing them all under coercive activity and will set forth the details on the allegations below.

(A) That during the pre-election time frame, several potential bargaining unit members were harassed and intimidated by representatives of the Union. To support this objection, the Employer would offer the testimony of employees Indhira Valdez, Jose Perez, Selena Perez, Shannon Donoghue, and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero and/or representative Ischa Portuk committed the coercive activity. Details of Guerrero's and/or Portuk's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" through "K").

(B) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that their votes would not be confidential. To support this objection, the Employer would offer the testimony of employees Indhira Valdez, Shannon Donoghue, and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" , "J" and "K").

(C) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that if the Union was not voted in, the Employer would fire the employees because they supported the Union. To support this objection, the Employer would offer the testimony of employees Indhira Valdez, Shannon Donoghue, and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G", "J" and "K").

(D) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that the only way they would keep their jobs is if they voted for the Union. To support this objection, the Employer would offer the testimony of employees Indhira Valdez, Shannon Donoghue, and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G", "J" and "K").

(A) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that "bad things" would happen to them if they voted for the Employer. To support this objection, the Employer would offer the testimony of employees Indhira Valdez, Jose Perez, Selena Perez, Shannon Donoghue, and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" through "K").

(B) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that the Union would make sure they "regretted it" if they voted for the Employer. To support this objection, the Employer would offer the testimony of employees Indhira Valdez, Jose Perez, Selena Perez, Shannon Donoghue, and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity.

Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" through "K").

(C) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that if the company remained non-union, the Employer would fire the Spanish speaking employees and replace them with English speaking employees. To support this objection, the Employer would offer the testimony of employees Indhira Valdez and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" and "K").

(D) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that the Union was aware of who signed authorization cards and unless those people voted for the Union, they would get fired. To support this objection, the Employer would offer the testimony of employees Indhira Valdez and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" and "K").

(E) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that the Union would get them better benefits if the Union was voted in, not simply negotiate for better benefits, but promised better benefits. To support this objection, the Employer would offer the testimony of employees Indhira Valdez, Selena Perez, Shannon Donoghue, and Nicanor

Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G", "I", "J" and "K"). Furthermore, Guerrero told Jose Perez that if he would receive zero benefits as he did not vote for the Union (see Exhibit "H").

(F) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that if they did not vote for the Union, the Union would drag them into court and pull immigration records. To support this objection, the Employer would offer the testimony of employees Indhira Valdez and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" and "K").

(G) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members that they would lose their overtime if they voted for the Employer. To support this objection, the Employer would offer the testimony of employees Indhira Valdez and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" and "K").

(H) That during the pre-election time frame, representatives of the Union told several potential bargaining unit members they better not mess with the Union or the Union would make their lives miserable. To support this objection, the Employer

would offer the testimony of employees Indhira Valdez, Jose Perez, Selena Perez, Shannon Donoghue, and Nicanor Gonzalez. Said employees would testify that Union representative Saul Guerrero committed the coercive activity. Details of Guerrero's actions as it relates to this topic are set forth in the attached affidavits of the employees (see Exhibits "G" through "K").

WHEREFORE, the Employer objects to the conduct of the election by the Union and believes that said conduct directly affected the employees' ability to freely cast their votes.

Respectfully submitted by:

BURDZINSKI & PARTNERS INCORPORATED

By: /s/ Brian Carroll

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Dayton, Ohio 45458
(620) 388-2441 – telephone
(866) 433-4070 – facsimile
bcarroll@burdzinski.com - email
Representatives for Classic Valet Parking, Inc.

Dated: June 19, 2015

CERTIFICATE OF SERVICE

This is to certify that service of the above and foregoing POSITION STATEMENT RELATING TO ELECTION OBJECTIONS has been made on Region 29 of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on the following parties, namely:

Ms. Rachel Zweighaft
Field Attorney, Region 29
Two Metro Tech Center
Suite 5100, Floor 5
Brooklyn, New York 11201-3838
rachel.zweighaft@nlrb.gov

Dated this 19th day of June, 2015.

By: /s/ Brian Carroll
Brian S. Carroll
Burdzinski & Partners Incorporated
A Federal Labor Practice

EXHIBIT “A”

Subject:	CLASSIC VALET PARKING INC. ET AL,
From:	Bernard Burdzinski II (bburdzinski@burdzinski.com)
To:	Matthew.jackson@nlrb.gov;
Cc:	connie.oliver@comcast.net; bcarroll@burdzinski.com; classicvaletinc@aol.com; eliascabanas@gmail.com; mp@elefantepersanis.com;
Date:	Sunday, April 26, 2015 8:58 PM

Sunday April 26th, 2015

Sent from bburdzinski@burdzinski.com to Matthew.jackson@nlrb.gov to:

Mr. Matthew A. Jackson
Field attorney
National Labor Relations Board [NLRB]
Region 29
2 Metro Tech Center
Suite 5100
Brooklyn, New York 11201-3838

Dear Matt,

The employer in: CLASSIC VALET PARKING INCORPORATED VERSUS THE RETAIL WHOLESALE DEPARTMENT STORE UNION AND THE UNITED FOOD & COMMERCIAL WORKERS LOCAL 1102, 29-RC-148399 [NATIONAL LABOR RELATIONS BOARD REGION TWENTY-NINE (29) AT BROOKLYN NEW YORK IN 2015] asserts that all eligible employees will be scheduled to work and additionally given the opportunity to vote in person either from six o'clock [6:00] until eight o'clock [8:00] in the morning and/or from three o'clock [3:00] until five o'clock [5:00] in the afternoon, making it unnecessary to conduct the election by mail ballot.

Since all of the eligible employees work for the employer at the Stony Brook University Medical Center, the voting could take place at one [1] of the following locations:

in a conference room close to the main entrance at the Stony Brook University Medical Center;

in a conference room located inside the library at the Stony Brook University Medical Center [Health Sciences Library, Health Sciences Tower, level 3, room 142, Stony Brook, New York, 11794, 631-444-3095];

in a conference room or alternatively in a guest room at the Hilton Garden Inn At Stony Brook located on the Stony Brook University Medical Center campus [1 Circle Road, Stony Brook, New York, 11794, 631-941-2980];

in a multi-purpose room at the Long Island State Veterans Home, which is located across the street from the Stony Brook University Medical Center campus [100 Patriots Road, Stony Brook, New York, 11790, 631-444-8548] or

in a conference room or alternatively in a guest room at the Holiday Inn Express [3131 Nesconset Highway, Stony Brook, New York, 11720, 631-471-8000].

None of the eligible employees would be excluded from casting their ballots and all voting could easily be accomplished from beginning to end on election day.

It is my understanding that the National Labor Relations Board [NLRB] prefers in person voting and insists that there be substantial and significant reasons to do otherwise; however there are no such reasons to do otherwise in this case.

All of the eligible workers live and work relatively close to the Stony Brook University Medical Center and it is the employer’s contention that conducting the voting by mail would increase the chance of voter fraud and disenfranchising eligible voters.

The regional director credited and mentioned in the Thursday April 23rd, 2015 DECISION AND DIRECTION OF ELECTION that workers "... have worked exclusively at Stony Brook since they began working there about 15 months ago; that they do not work at the employer's other sites and that they consistently work with the same co-workers during their shifts ..."

There is no reasonable basis for conducting the election by mail ballot.

Feel free to contact the undersigned if you have any comments and/or questions.

Respectfully,

Bud.

Bernard Florian Burdzinski II

bburdzinski@burdzinski.com

Burdzinski & Partners Incorporated
A Federal Labor Practice

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Dayton, Ohio 45458
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[866] 645-7304 fax
[937] 885-3705 office
[937] 430-5491 Wireless

EXHIBIT “B”

Subject:	Classic Valet Parking - Case 29-RC-148399
From:	Jackson, Matthew (Matthew.Jackson@nlrb.gov)
To:	bburdzinski@burdzinski.com; mp@elefantepersanis.com; matt.rmglaw@verizon.net;
Cc:	bcarroll@burdzinski.com;
Date:	Monday, April 27, 2015 5:30 PM

Dear Messrs. Burdzinski, Persanis and Rocco:

The Regional Director (RD) has considered the parties' positions regarding whether a mail ballot or a manual ballot election should take place pursuant to the RD's April 23 Decision and Direction of Election in the above-captioned case. The RD has determined to administer the election via **mail ballot** as requested by the Petitioner. The reasons why the RD has determined that a mail ballot election is warranted in this case include:

1) The uncertainty surrounding the physical location in which a manual election would take place. In that regard, the Employer does not have a "brick and mortar" facility at Stony Brook University Hospital (the "Hospital"), and it remains unclear whether the Hospital would permit the NLRB to conduct an election inside Hospital facilities, and if so, which facilities would be made available and how accessible such facilities might be for eligible voters;

2) Eligible employees are "scattered" in the sense that their work schedules vary significantly, so that they are not all present at the Hospital at the same times;

3) The Petitioner/Union has presented evidence – as yet uncontroverted by the Employer – that the Employer has been threatening to re-assign and/or has re-assigned eligible employees away from their regular work assignments at the Hospital, in favor of assigning these employees to work at other geographic locations, allegedly in retaliation for their support for the Union. Conducting a mail ballot election in these circumstances would eliminate the risk that the Employer might re-assign employees in order to prevent them from voting in the election; and

4) Given the relatively small size of the unit at issue here, as well as the distance between the Hospital and the Regional Office, and the likelihood that the election would comprise multiple polling sessions, possibly occurring during evening, night, and/or early morning hours, it would be a more efficient use of Agency resources to conduct the election via mail ballot.

I will send you each a separate letter setting forth the date on which the mail ballot election will commence and the procedures we will follow to fairly and impartially administer the election. The ballots will be sent to each voter identified on the Employer's "Excelsior List" of eligible voters on **Tuesday, May 19, 2015**. Ballots will also be mailed to any other individual alleged to be an eligible

voter by any party. Please be reminded that the Employer must submit the "Excelsior List" to the Region by this Thursday, April 30 (seven days after the RD issued his Decision and Direction of Election).

Please contact me if you have any questions or wish to discuss this matter.

Regards,

Matt Jackson

Field Attorney

National Labor Relations Board

Region 29

2 MetroTech Center, 5th Floor

Brooklyn, NY 11201

(718) 330-2148

EXHIBIT “C”

Subject:	BURDZINSKI FRIDAY 29TH, 2015 ARRANGEMENTS WITH THE LABOR BOARD FOR TWO [2] CLASSIC EMPLOYEES TO VOTE ON MONDAY JUNE 1ST, 2015
From:	Bernard Burdzinski II (bburdzinski@burdzinski.com)
To:	classicvaletinc@aol.com; eliascabanas@gmail.com; mariobarajas102@gmail.com;
Cc:	bcarroll@burdzinski.com; connie.oliver@comcast.net;
Date:	Friday, May 29, 2015 1:27 PM

Friday May 29th, 2015

Greetings,

Last night my partner Brian Carroll sent an email to Matt Jackson, the National Labor Relations Board [NLRB] agent handling our case, that explained that two [2] of our employees have not as yet received ballots, by mail, that would enable them to vote, in the upcoming election.

Not hearing anything back from the National Labor Relations Board [NLRB], I began calling their office as soon as the government agency opened this morning.

I was only able to leave messages for Matt Jackson, our primarily contact but continued trying to reach other people in that office that could possibly help us.

Some of the Labor Board employees that had specific knowledge of the facts concerning the mailing of ballots to our employees were also unavailable.

Nevertheless, after many telephone calls, I was able to reach an agreement, with the help of Ms. Kimberly, the acting information officer and the regional director for the National Labor Relations Board [NLRB] as follows:

at eleven o'clock [11:00] on Monday morning June 1st, 2015, paper ballots will be available to be picked up by Selena Perez and Claudio Delance Marrero at: 2 Metro Tech Center, Suite 5100, Brooklyn, New York, 11201-3838, 718-330-7713;

those employees, if they so choose, can mark their ballots and give their ballots to a Labor Board person who will commingle their ballots with other ballots cast by employees of Classic Valet Parking.

I am currently waiting for an agent for the National Labor Relations Board [NLRB] to give me the name of the person that will be working with our employees on Monday morning, as soon as I have that name I will forward it on to you.

In the event that the ballots are received in the mail this afternoon by Selena Perez and Claudio Delance Marrero and they want to cast their vote by mail, let me know and I will attempt to cancel the above mentioned arrangements.

Otherwise, the Labor Board will be expecting our voters to arrive and cast their ballots in person, on Monday morning.

Respectfully,

Bud.

Bernard Florian Burdzinski II
bburdzinski@burdzinski.com

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A Federal Labor Practice

www.burdzinski.com

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Dayton, Ohio 45458
United States of America (USA)

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[937] 885-3705 office
[937] 430-5491 Wireless

EXHIBIT “D”

Subject:	Classic Valet Parking
From:	Bud (bburdzinski@burdzinski.com)
To:	matthew.jackson@nlrb.gov;
Cc:	csauter@burdzinski.com; connie.oliver@comcast.net; bcarroll@burdzinski.com;
Date:	Friday, June 5, 2015 4:04 PM

Friday June 5th, 2015

Matt,

Did the NLRB receive any additional ballots in the mail subsequent to the vote counting on Thursday June 4th, 2015?

Respectfully,

Bud

Bernard Florian Burdzinski II
Burdzinski & Partners Incorporated
A Federal Labor Practice
2393 Hickory Bark Drive
Dayton, Ohio 45458
United States Of America (USA)
BBurdzinski@Burdzinski.com
Facsimile (866) 645-7304
Main (937) 885-3705
Wireless (937) 430-5491

EXHIBIT “E”

Subject:	RE: Classic Valet Parking
From:	Jackson, Matthew (Matthew.Jackson@nlrb.gov)
To:	bcarroll@burdzinski.com;
Date:	Monday, June 8, 2015 2:40 PM

Please see below, where I have entered the postmark date on each of the envelopes received by the Region after the ballot count:

1. Edwin Arias (Voter #3) – postmarked 5/28/15
2. Phillip Borzumato (Voter #7) – postmarked 5/28/15
3. Claudio Marrero (Voter #15) – postmarked 6/1/15
4. Selena Perez (Voter #19) – postmarked 6/1/15
5. Jose M. Perez (Voter #21) – postmarked 5/29/15
6. Jeremy Schulze ((Voter #24) – postmarked 5/28/15
7. Douglas Taylor (Voter #26) – postmarked 5/28/15
8. Indhira Valdez (Voter #28) – postmarked 5/30/15
9. Henry N. Valdez (Voter #30 - not included on original Excelsior List) – postmarked 5/28/15

All of these envelopes were received by the Region on Friday, June 5. I do not know what accounts for the delay in delivery to the Region.

Pursuant to NLRB Rules & Regs Sec. 102.69(a), the Employer has 7 days from the preparation of the Tally of Ballots. In this case, the Tally of Ballots was prepared on June 4, so that gives the Employer until Thursday, June 11 to file its objections.

From: Brian Carroll [mailto:bcarroll@burdzinski.com]
Sent: Monday, June 08, 2015 3:05 PM
To: Jackson, Matthew; Bud
Cc: Cyndi; Connie
Subject: Re: Classic Valet Parking

Matt:

Thank you for the email. Two question. First, can you advise as to the postmark date on the envelopes? Second, when are objections due? Thanks.

Brian

--
Brian S. Carroll
Burdzinski & Partners Inc.
A Federal Labor Practice
2393 Hickory Bark Drive
Dayton, OH 45458
(937) 430-9843 - mobile
(866) 433-4070 - fax
bcarroll@burdzinski.com

From: "Jackson, Matthew" <Matthew.Jackson@nlrb.gov>
To: Bud <bburdzinski@burdzinski.com>
Cc: Cyndi <csauter@burdzinski.com>; Connie <connie.oliver@comcast.net>; Brian Carroll <bcarroll@burdzinski.com>
Sent: Monday, June 8, 2015 1:09 PM
Subject: RE: Classic Valet Parking

Bud:

On Friday June 5, the Region received the yellow envelopes that voters used to return their ballots from the following individuals:

1. Edwin Arias (Voter #3)
2. Phillip Borzumato (Voter #7)
3. Claudio Marrero (Voter #15)
4. Selena Perez (Voter #19)
5. Jose M. Perez (Voter #21)
6. Jeremy Schulze ((Voter #24)

7. Douglas Taylor (Voter #26)
8. Indhira Valdez (Voter #28)
9. Henry N. Valdez (Voter #30 - not included on original Excelsior List)

The Region is holding these ballots unopened, pending the outcome of any objections to the conduct of election that you may file. Please let me know if you have any questions or would like to discuss this matter.

Regards,
-Matt Jackson

-----Original Message-----
From: Bud [mailto:bburdzinski@burdzinski.com]
Sent: Friday, June 05, 2015 4:05 PM
To: Jackson, Matthew
Cc: Cyndi; Connie; Brian Carroll
Subject: Classic Valet Parking

Friday June 5th, 2015

Matt,

Did the NLRB receive any additional ballots in the mail subsequent to the vote counting on Thursday June 4th, 2015?

Respectfully,

Bud

Bernard Florian Burdzinski II
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2393 Hickory Bark Drive
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BBurdzinski@Burdzinski.com
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Main (937) 885-3705
Wireless (937) 430-5491

EXHIBIT “F”

Subject:	RE: Classic Valet Parking
From:	Jackson, Matthew (Matthew.Jackson@nlrb.gov)
To:	bcarroll@burdzinski.com; bburdzinski@burdzinski.com;
Cc:	csauter@burdzinski.com; connie.oliver@comcast.net;
Date:	Monday, June 8, 2015 2:58 PM

Brian and Bud:

The Region today received another ballot envelope from a Classic Valet employee. We received in the mail a white envelope from sender "Clerk of U.S. District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201." Inside the white envelope were two separate envelopes – one opened yellow envelope bearing what appears to be the signature of Voter #14 (Scott Gruenwald); and an unopened blue envelope marked "OFFICIAL SECRET BALLOT – UNITED STATES GOVERNMENT – TO BE OPENED *ONLY* BY THE NATIONALLABOR RELATOONS BOARD."

The yellow envelope was postmarked May 27, 2015. The white one that came from the US District Court was postmarked June 5, 2015. Again, we received all of this at about 2:45 pm today.

It appears that the Postal Service mistakenly delivered this ballot to the nearby District Court building, instead of to the Regional Office, even though the Regional Office address is clearly printed on the yellow return envelope.

I'll keep letting you know if we receive any other late ballots. None of the late ballots we have been receiving will be opened until any objections to the conduct of the election get resolved. Let me know if you have any further questions.

Thanks,

-Matt Jackson

From: Brian Carroll [mailto:bcarroll@burdzinski.com]
Sent: Monday, June 08, 2015 3:05 PM
To: Jackson, Matthew; Bud
Cc: Cyndi; Connie

Subject: Re: Classic Valet Parking

Matt:

Thank you for the email. Two question. First, can you advise as to the postmark date on the envelopes? Second, when are objections due? Thanks.

Brian

--
Brian S. Carroll
Burdzinski & Partners Inc.
A Federal Labor Practice
2393 Hickory Bark Drive
Dayton, OH 45458
(937) 430-9843 - mobile
(866) 433-4070 - fax
bcarroll@burdzinski.com

From: "Jackson, Matthew" <Matthew.Jackson@nlrb.gov>
To: Bud <bburdzinski@burdzinski.com>
Cc: Cyndi <csauter@burdzinski.com>; Connie <connie.oliver@comcast.net>; Brian Carroll <bcarroll@burdzinski.com>
Sent: Monday, June 8, 2015 1:09 PM
Subject: RE: Classic Valet Parking

Bud:

On Friday June 5, the Region received the yellow envelopes that voters used to return their ballots from the following individuals:

1. Edwin Arias (Voter #3)
2. Phillip Borzumato (Voter #7)
3. Claudio Marrero (Voter #15)
4. Selena Perez (Voter #19)
5. Jose M. Perez (Voter #21)
6. Jeremy Schulze ((Voter #24)
7. Douglas Taylor (Voter #26)
8. Indhira Valdez (Voter #28)
9. Henry N. Valdez (Voter #30 - not included on original Excelsior List)

The Region is holding these ballots unopened, pending the outcome of any objections to the conduct of election that you may file. Please let me know if you have any questions or would like to discuss this matter.

Regards,
-Matt Jackson

-----Original Message-----
From: Bud [mailto:bburdzinski@burdzinski.com]
Sent: Friday, June 05, 2015 4:05 PM
To: Jackson, Matthew
Cc: Cyndi; Connie; Brian Carroll
Subject: Classic Valet Parking

Friday June 5th, 2015

Matt,

Did the NLRB receive any additional ballots in the mail subsequent to the vote counting on Thursday June 4th, 2015?

Respectfully,

Bud

Bernard Florian Burdzinski II
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